

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 02/20/01?
  - b. The request was received on 02/11/02.

### **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC-60 and Letter Requesting Dispute Resolution dated 03/28/02
  - b. HCFAs
  - c. EOBs
  - d. Reimbursement data
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Based on Commission Rule 133.307 (g)(4), the Division notified the insurance carrier Austin Representative of their copy of the request on 04/03/02. The Respondent did not submit a response to the request. The "No Response Submitted" sheet is reflected in Exhibit 2 of the Commission's case file.
3. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: per letter dated 03/28/02  
"The date of service involved in this dispute was from February 20, 2001 for treatment regarding the above-referenced claimant's work-related injury. The Carrier denied payment with payment exception code "M" for all items provided in the UB-92, which were Fee Codes with a 'MAR' and treatment codes without a 'MAR.'"
2. Respondent: The carrier did not submit a 14-day response

### **IV. FINDINGS**

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 02/20/01.
2. The provider, an ambulatory surgery center, billed a total of \$9,834.31 on the DOS in dispute.
3. The carrier reimbursed \$1,231.60 for the DOS in dispute and their EOB has the denial "M – THE REIMBURSEMENT FOR THE SERVICE RENDERED HAS BEEN

DETERMINED TO BE FAIR AND REASONABLE BASED ON BILLING AND PAYMENT RESEARCH AND IS IN ACCORDANCE WITH LABOR CODE 413.011(B).”

4. Per the TWCC-60, the amount in dispute is \$5,763.71. The difference between the total amount billed and the amount reimbursed is \$8,602.71.

## **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier has not submitted a 14-day response to the dispute and therefore, a methodology per above mentioned Rule is not available for review.

The provider has submitted reimbursement data. The provider has submitted several EOBs from this carrier, which indicate it has reimbursed the provider from 3% to 87% of the billed amount on other patients. These EOBs do have the same ICD-9 code as the date of service in dispute. However, the billed amounts range from a low of \$771.11 to a high of \$14,032.86. This wide range would indicate that not all of these EOBs are for similar treatment. The billed amount of this dispute is \$9,834.31. In addition, the provider has submitted a reimbursement log of other EOBs. This list shows the date of service, the amount billed, amount reimbursed, percentage of the billed amount reimbursed, and the payer of the bill. The list shows a wide range in the amount billed and in the amount of reimbursement received as a percentage. The list contains no references to the treatments/services performed and no ICD-9 codes.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has not submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304. The provider has submitted EOBs from this carrier in an effort to show an inconsistent application of the reimbursement methodology by the carrier. Regardless of the carrier’s lack of methodology, inconsistent application of its methodology or a timely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight is given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs

MDR: M4-02-2219-01

provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 6<sup>th</sup> day of June, 2002.

Larry Beckham  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.